

PT 98-32

Tax Type: **PROPERTY TAX**

Issue: **Charitable Ownership/Use**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

PROVISO)	
FAMILY SERVICES,	)	Docket Nos: 93-16-867
APPLICANT	)	94-16-1300
	)	95-16-244
	)	(On - site service
	)	center properties)
)	
	)	Real Estate Tax Exemptions for
	)	the 1993, 1994 & 1995 Tax Years
)	
v.	)	P.I.N.(S): 15-21-200-070
	)	15-21-200-026
	)	15-21-200-027
	)	15-21-200-028
	)	15-21-200-029
)	
	)	Cook County Parcels
)	
)	
STATE of ILLINOIS,	)	Alan I. Marcus
DEPARTMENT of REVENUE	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. Richard A. Walsh and Thomas G. Moffit of McCracken, Walsh, deLavan & Hetler on behalf of Proviso Family Services.

SYNOPSIS: These proceedings raise the general issues of whether the above-captioned Parcel Index Numbers (hereinafter collectively referred to as the "subject parcels" or the "subject

properties") satisfy the ownership and use requirements set forth in the real estate exemption statutes¹ that pertain to "institutions of public charity." The specific issues are as follows: first, whether real estate identified by Cook County Parcel Index Number 15-21-200-070 (hereinafter "Parcel 200-070") qualifies for exemption from 1993 real estate taxes under 35 **ILCS** 205/19.7; second, whether parcel 200-070 qualifies for exemption from 1994 real estate taxes under 35 **ILCS** 200/15-65; and third, whether real estate identified by Cook County Parcel Index Numbers 15-21-200-026, 15-21-200-027, 15-21-200-028 and 15-21-200-029 (hereinafter "parcels 200-026 through 029") qualify for exemption from 1995 real estate taxes under 35 **ILCS** 200/15-65.

1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922) (hereinafter "Bracher"), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. With one exception, this applicant is seeking exemption from 1993 and 1994 real estate taxes. Therefore, the three 1993 claims shall be governed by the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.* However, the three 1994 claims, together with the 1995 claim, shall be governed by the Property Tax Code, 35 **ILCS** 200/1 *et seq.*

A literal reading of Bracher seems to require that the 1993 and 1994 cases be decided under different statutes. While this is technically correct, all of these cases, together with the 1995 case, must be decided under the exemption provisions that pertain to "institutions of public charity." Those provisions (found in 35 **ILCS** 205/19.7 and 35 **ILCS** 200/15-65) are codified in different forms and contain some variations in verbiage. Nevertheless, their substance remains identical, at least for present purposes of assessing whether any or all of the subject properties satisfy the omnibus ownership and use requirements contained in both statutes. (See *infra* at pp. 31-37). Therefore, while the two provisions shall be cited separately where technically necessary, the conclusions made under one version of the statute shall not be different in substance from those made under the other.

The controversies arise as follows:

Proviso Family Services (hereinafter the "applicant") filed three separate Real Estate Exemption Complaints² with the Cook County Board of (Tax) Appeals (hereinafter the "Board") (Dept. Group Ex. No. 1). The Board reviewed each of the complaints and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that some, but not all, of the requested exemptions be granted. *Id.*

The Department docketed the complaints as follows:

Docket Number	Corresponding P.I.N.(S):
93-16-867	200-070
94-16-1300	200-070 ('94 exemption claim on same parcel)
95-16-244	200-026 through 200-029

Dept. Group Ex. No. 1.

The Department later partially rejected the above recommendations by issuing one certificate (affecting Docket No. 93-16-867) finding that property at issue therein was not in exempt use. (Dept. Group Ex. No. 2, Document A). The Department issued two other certificates (pertaining to Docket Nos. 94-16-1300 and 95-16-244) finding that the properties at issue in those cases were not in exempt ownership and not in exempt use. (Dept. Group Ex. No. 2, Documents B, C). Applicant subsequently filed timely requests for hearing as to each of

2. For exact filing dates and other details about the complaints, *See*, Dept. Group Ex. No. 1.

these denials (Dept. Group Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that all of the Department's denials be affirmed.

FINDINGS OF FACT:³

A. Preliminary Considerations & Applicant's Overall Organizational Structure

1. The Department's jurisdiction over these matters and its respective positions therein are established by the admission into evidence of Dept. Group Ex. Nos. 1, 2.
2. Applicant was originally incorporated under the General Not-For-Profit Corporation Act of Illinois on November 9, 1971. Its original corporate name, Proviso Township Mental Health Center, was changed to Proviso Family Services by an Amendment to its Articles of Incorporation dated April 30, 1982. Applicant Ex. Nos. 1, 3.
3. Applicant's original organizational purpose was to operate and maintain a mental health center that provides mental health services to residents of Proviso Township, provided that such services do not require treatment by a medical doctor. Applicant subsequently changed this purpose to "assist[ing] our

3. I have divided the Findings of Fact into the following categories in order to promote greater clarity and reduce any confusion that results from the voluminous evidence submitted herein: Preliminary Considerations & Applicant's Overall Organizational Structure (Findings of Fact 1-6); Applicant's Overall Operations (Findings of Fact 7-19); Applicant's Overall Fiscal Structure (Findings of Fact 20-28); Location of the Subject Parcels & Ownership Issues (Findings of Fact 29- 30); Use Issues Related to Parcel 200-070 (Findings of Fact 31-46) and Use Issues Related to Parcels 200-026 through 200-029 (Findings of Fact 47-70).

community members live emotionally, socially and physically healthy lives" via by-laws dated February 24, 1992. Applicant Ex. Nos. 1, 4.

4. Applicant's by-laws further provide, *inter alia*, that: (1) its daily business affairs shall be managed by a Board of Directors, none of whom shall be compensated for serving as Directors; (2) the corporate officers shall be president, one or more vice presidents, treasurer, secretary and such other officers as may be elected pursuant to the relevant provisions of applicant's by-laws; and (3) the corporation shall have no members. Applicant Ex. No. 4.
5. Applicant obtained an exemption from federal income tax on July 18, 1972. The Internal Revenue Service granted this exemption pursuant to Section 501(c)(3) of the Internal Revenue Code and based same on its conclusion that applicant qualified as an organization described in Section 170(b)(1)(A)(vi) thereof. Applicant Ex. No. 9; Tr. pp. 22-23.
6. The Department issued applicant, then known as Proviso Township Mental Health Center of Melrose Park, IL, an exemption from Illinois Use and other related taxes on November 19, 1993. The Department reissued this exemption under applicant's current name, Proviso Family Services of Melrose Park, IL, on January 24, 1994. Tr. p. 23; Applicant Ex. Nos. 10A, 10B.

B. Applicant's Overall Operations

7. Applicant's overall goal is to furnish a variety of mental health services on a cost-based standard. These services include psychological testing, individual and group therapy sessions, family/couples therapy, individual, group, family and couples counseling, medication review groups, individual social rehabilitation

groups, crisis intervention, an intensive day treatment program that focuses on intensive stabilization, another day treatment program focuses on more extensive treatment and rehabilitation issues, a geriatric day treatment program known as Partial Plus, various residential services, including a transitional living program for the chronically mentally ill known as Harbor House, and evaluation, assessment, remedial education and other services for DUI offenders. Applicant Ex. Nos. 6, 7, 33.⁴

8. Applicant assesses fees for all of the services it provides.⁵ While these fees are cost-based, they are also founded on the client's income, financial situation and other considerations affecting the client's ability to pay. Applicant Ex. Nos. 6, 7.
9. Clients with annual gross incomes of \$34,000.00 and one dependent are, under applicant's fee policy, expected to assume full responsibility for payment of any fees in full. Applicant does not vary this expectation as the client's income and number of dependents increase. It does however, set fees for certain services on a sliding scale, provided that the client resides in Proviso Township and can not afford to assume full responsibility for any fees assessed.⁶ *Id.*
10. Persons who do not reside in Proviso Township are ineligible for the sliding scale. Those receiving treatments or services in applicant's geriatric day, intensive

4. For detailed descriptions of these and other services provided by applicant, *See*, Applicant Ex. Nos. 6, 7, 33.

5. For details about the exact fees charged for particular services, *See*, Applicant Ex. No. 6, 7.

6. For exact figures concerning the sliding scale, as well as other information about the extent to which increases in a client's income and number of dependents affect applicant's expectation that the client will pay all fees in full, *See, Id.*

chemical dependency or DUI programs are likewise ineligible for sliding scale fees, even though they reside in Proviso Township. *Id.*

11. Those who reside in Proviso Township while receiving services but move away during the course of treatment lose their eligibility to receive services on a sliding scale basis. Such persons are, however, afforded the option of continuing services at the full fee or terminating services and continuing elsewhere. *Id.*
12. Applicant provides clients choosing the latter with assistance in finding resources near their new residence. It also affords these clients three sessions at the sliding scale rate in order to allow for clinical termination. *Id.*
13. Any extensions or exceptions to the three session rule must be approved by the appropriate clinical manager with notice provided to the financial services staff. *Id.*
14. Applicant explains this and other aspects of its fee policy to all clients who receive services via a financial counseling session, during which any data bearing on the client's ability to pay is reviewed and appropriate fees fixed. *Id.*
15. All fees are due at the time of service. While clients may request payment plans or fee reductions based on personal or economic emergencies that occur during the course of treatment, such plans or reductions are subject to an approval process and periodic review.⁷ *Id.*

7. The approval process starts with the client filling out an formal application, continues with reviews by the appropriate program director and associate director and (in cases of disapproval by the associate director) and concludes with review by the senior management team, whose decision is final. For a detailed description of these procedures and other information pertaining to fee reductions and the review process, *See*, Applicant Ex. Nos. 6, 7.

16. In cases where a client's service provider learns of a substantial change in the client's financial situation which would make payment of a higher fee more appropriate, it is the responsibility of the service provider to notify applicant's financial services department of the need for a new financial assessment and to assist the client in making an appointment for same. *Id.*
17. Applicant attempts not to refuse needed services to those who can not afford to pay. However, its fee policy states that it may do so under the following circumstances: (1) where a client refuses to pay even after applicant has determined that he/she is able to do so, but only after repeated efforts to secure payment are made and termination is approved by the appropriate clinical manager; and (2), where a client builds up a large debt balance and makes no effort to reduce same, but only after the client is referred by applicant's financial services department to the appropriate clinical manager, who will then review the entire situation and make an appropriate disposition. *Id.*
18. Applicant will allow appropriate conclusion time (which, under its fee policy, is recommended to consist of no more than 3 sessions) if a client's services are terminated for large debt balances. *Id.*
19. Applicant does not refuse services under these or any other scenarios to persons in crisis or those who pose a danger to themselves or others. *Id.*

C. Applicant's Overall Fiscal Structure

20. Applicant has no capital stock or shareholders. It does not pay dividends but operates on a fiscal year that begins July 1 and ends June 30 of each year. Applicant Ex. No. 4; Tr. pp. 14, 53.

21. A financial statement pertaining to the fiscal year ended June 30, 1993 reveals the following about applicant's sources of revenue during that fiscal year:

SOURCE	AMOUNT	% of TOTAL⁸
Public Support and Revenue		
Contributions	\$ 44,606.00	1.0%
United Way	\$ 105,841.00	2.3%
Total Public Support	\$ 150,447.00	3.3%
Fees & Grants from Governmental Agencies	\$3,307,480.00	74%
Other Revenue		
Client Fees	\$ 410,338.00	9.1%
Medicaid	\$ 155,926.00	3.4%
Insurance	\$ 77,691.00	1.7%
Medicare	\$ 119,253.00	2.7%
Service Contracts	\$ 148,184.00	3.0%
Rentals	\$ 45,761.00	1%
Interest	\$ 22,073.00	<1%
Miscellaneous	\$ 45,561.00	1%
Total Other Revenue	\$ 1,024,787.00	23%
TOTAL PUBLIC SUP- PORT & REVENUE	\$4,482,714.00	

Applicant Ex. No. 34

22. The same financial statement reveals the following information about the expenses applicant incurred during the fiscal year ended June 30, 1993:

SOURCE	AMOUNT	% of TOTAL
Program Services		
Sustaining Care	\$384,683.00	9.0%
Alcoholism Outpatient	\$194,083.00	4.5%
Alcoholism Prevention	\$ 57,029.00	1.3%
Alcoholism Women's Services	\$127,230.00	3.0%
Emergency	\$434,929.00	10%
Intensive Case Management/LTR	\$126,321.00	3.0%

8. All percentages shown herein are approximations derived by dividing the category of income or expense (e.g. Contributions) by the appropriate total. Thus, for example, \$44,606.00/\$4,482,714.00 = .0099 (rounded to 4 places past the decimal) or approximately 1%.

Triage/Respite	\$350,062.00	8.2%
Adastra Day Treatment	\$209,084.00	5.0%

SOURCE (CONT'D.)	AMOUNT (CONT'D.)	% of TOTAL (CONT'D.)
Children & Adolescent	\$256,177.00	6.0%
Community Living Center (hereinafter "CLC")	\$282,397.00	6.6%
Harbor House	\$226,010.00	5.3%
Counseling Services to the Elderly	\$ 38,163.00	<1%
Counseling Services to Latino-Americans	\$ 36,905.00	<1%
Family Services	\$167,458.00	3.9%
Services for Seniors	\$ 57,573.00	1.3%
Community Integrated Living Arrangement Homes (hereinafter "CILA")	\$610,189.00	14.3%
Riveredge Inpatient Program	\$ 51,804.00	1.2%
McNeal Inpatient Program	\$ 25,639.00	<1%
Child Advocacy Center	\$ 160,446.00	3.8%
Latino Outpatient	\$ 88,285.00	2.0%
Children & Adolescent Intervention & Case Management	\$ 179,961.00	4.2%
Pathway	\$ 72,339.00	1.7%
Personal Best	\$ 127,544.00	3.0%
TOTAL EXPENSES	\$4,264,311.00	

Id.

23. A financial statement pertaining to the fiscal year ended June 30, 1994 reveals the following about applicant's sources of revenue during that fiscal year:

SOURCE	AMOUNT	% of TOTAL
Public Support and Revenue		
Contributions	\$ 51,165.00	1.0%
United Way	\$ 105,411.00	2.0%
Total Public Support	\$ 156,576.00	3.0%
Fees & Grants from Governmental Agencies	\$3,766,983.00	73%
SOURCE (CONT'D.)	AMOUNT (CONT'D.)	% of TOTAL (CONT'D.)
Other Revenue		
Client Fees	\$ 496,878.00	10 %

Medicaid	\$ 238,171.00	4.6%
Insurance	\$ 84,455.00	1.6%
Medicare	\$ 126,276.00	2.4%
Service Contracts	\$ 219,156.00	4.2%
Rentals	\$ 39,682.00	<1%
Interest	\$ 25,750.00	<1%
Miscellaneous	\$ 5,362.00	<1%
Total Other Revenue	\$1,235,730.00	
TOTAL PUBLIC SUP- PORT & REVENUE	\$ 5,159,289.00	

Applicant Ex. No. 35

24. The same financial statement reveals the following information about the expense applicant incurred during the fiscal year ended June 30, 1994:

SOURCE	AMOUNT	% of TOTAL
Program Services		
Consortium	\$ 39,039.00	<1%
Sustaining Care	\$391,628.00	7.8%
Alcoholism Outpatient	\$291,763.00	5.8%
Alcoholism Prevention	\$ 47,952.00	<1%
Alcoholism Women's Services	\$110,880.00	2.2%
Emergency	\$416,687.00	8.2%
Intensive Case Management/LTR	\$140,707.00	2.8%
Triage/Respite	\$388,682.00	7.7%
Adastra Day Treatment	\$232,634.00	4.6%
Children & Adolescent	\$231,671.00	4.6%
Emergency Psychiatric Services	\$ 38,136.00	<1%
CLC	\$244,037.00	4.8%
Harbor House	\$261,197.00	5.2%
Counseling Services to the Elderly	\$ 34,121.00	<1%
Counseling Services to Latino-Americans	\$ 36,073.00	<1%
Family Services	\$171,861.00	3.4%
SOURCE (CONT'D.)	AMOUNT (CONT'D.)	% of TOTAL (CONT'D.)
Services for Seniors	\$ 54,403.00	1%
CILA	\$659,942.00	13.1%
Inpatient Services	\$ 29,305.00	<1%
Child Advocacy Center	\$170,467.00	3.4%

Latino Outpatient	\$ 86,380.00	1.7%
Children & Adolescent Intervention & Case Management	\$198,648.00	3.9%
Pathway	\$114,384.00	2.3%
Personal Best	\$644,904.00	13.8%
TOTAL EXPENSES	\$5,035,501.00	

Id.

25. A financial statement pertaining to the fiscal year ended June 30, 1995 reveals the following about applicant's sources of revenue for that fiscal year:

SOURCE	AMOUNT	% of TOTAL
Public Support and Revenue		
Contributions	\$ 11,553.00	<1%
United Way	\$ 105,134.00	1.8%
Total Public Support	\$ 116,687.00	2%
Fees & Grants from Governmental Agencies	\$3,848,884.00	66%
Other Revenues		
Client Fees	\$ 532,792.00	9%
Medicaid	\$ 472,097.00	8%
Insurance	\$ 58,084.00	1%
Medicare	\$ 220,693.00	4%
Service Contracts	\$ 410,190.00	7%
Rentals	\$ 33,524.00	<1%
Interest	\$ 33,667.00	<1%
Miscellaneous	\$ 65,605.00	1%
Total Other Revenue	\$1,826,652.00	31%
TOTAL PUBLIC SUP- PORT & REVENUE	\$5,792,223.00	

Applicant Ex. No. 36

26. The same financial statement reveals the following information about the expenses applicant incurred during the fiscal year ended June 30, 1995:

SOURCE	AMOUNT	% of TOTAL
Program Services		
Sustaining Care	\$ 398,245.00	7.1%
Alcoholism Outpatient	\$ 332,129.00	5.9%
Alcoholism Prevention	\$ 54,527.00	<1%
Alcoholism Women's Services	\$ 122,341.00	2.2%
Emergency	\$ 427,881.00	7.7%
Intensive Case Management/LTR	\$ 142,661.00	2.5%
Triage/Respite	\$ 460,664.00	8.3%
Children & Adolescent	\$ 261,323.00	4.7%
CLC	\$ 258,143.00	4.6%
Harbor House	\$ 228,749.00	4.1%
Counseling Services to the Elderly	\$ 34,195.00	<1%
Counseling Services to Latino-Americans	\$ 34,114.00	<1%
Family Services	\$ 205,269.00	3.7%
Services for Seniors	\$ 48,711.00	<1%
CILA	\$ 659,357.00	12%
Children & Adolescent Intervention & Case Management	\$ 136,664.00	2.4%
Inpatient Services	\$ 25,867.00	<1%
Intensive Outpatient	\$ 21,143.00	<1%
Child Advocacy Center	\$ 172,191.00	3.1%
Pathway	\$ 159,899.00	2.9%
Latino Outpatient	\$ 85,268.00	1.5%
Personal Best	\$ 732,108.00	13%
Emergency Psychiatric Services	\$ 37,146.00	<1%

SOURCE (CONT'D.)	AMOUNT (CONT'D.)	% of TOTAL (CONT'D.)
Consortium	\$ 38,837.00	<1%
LAN ISO Project	\$ 44,048.00	<1%
Adastra Day Treatment	\$ 273,124.00	4.9%
Partial Plus	\$ 179,196.00	3.2%
TOTAL EXPENSES	\$5,573,800.00	

Id.

27. A financial statement pertaining to the fiscal year ended June 30, 1996 reveals the following about applicant's sources of revenue for that fiscal year:

SOURCE	AMOUNT	% of TOTAL
Public Support and Revenue		
Contributions	\$ 19,973.00	<1%
United Way	\$ 106,721.00	1.7%
Total Public Support	\$ 126,694.00	2.0%
Fees & Grants from Governmental Agencies	\$4,301,346.00	67%
Other Revenue		
Client Fees	\$ 427,623.00	6.7%
Medicaid	\$ 530,984.00	8.3%
Insurance	\$ 51,950.00	<1%
Medicare	\$ 541,595.00	8.4%
Service Contracts	\$ 337,189.00	5.2%
Rentals	\$ 37,373.00	<1%
Interest	\$ 48,157.00	<1%
Miscellaneous	\$ 9,558.00	<1%
Total Other Revenue	\$1,984,429.00	
TOTAL PUBLIC SUP- PORT & REVENUE	\$6,412,469.00	

Applicant Ex. No. 37

28. The same financial statement reveals the following information about the expenses applicant incurred during the fiscal year ended June 30, 1996:

SOURCE	AMOUNT	% of TOTAL
Program Services		
Sustaining Care	\$ 407,644.00	6.4%
Alcoholism Outpatient	\$ 309,595.00	4.9%
Alcoholism Prevention	\$ 58,490.00	<1%
Alcoholism Women's Services	\$ 101,308.00	1.6%
Alcoholism Women's Service Case Management	\$ 13,053.00	<1%
Emergency	\$ 453,451.00	7.1%
Intensive Case Management/LTR	\$ 167,565.00	2.6%
Triage/Respite	\$ 478,087.00	7.5%
Children & Adolescent	\$ 357,149.00	5.6%
CLC	\$ 285,287.00	4.5%
Harbor House	\$ 244,289.00	3.8%
Counseling Services to the Elderly	\$ 33,158.00	<1%
Counseling Services to Latino-Americans	\$ 33,132.00	<1%
Family Services	\$ 201,791.00	3.1%
Services for Seniors	\$ 49,500.00	<1%
CILA	\$ 691,432.00	11%
Inpatient Services	\$ 22,482.00	<1%
Intensive Outpatient	\$ 35,684.00	<1%
Child Advocacy Center	\$ 184,332.00	2.9%
Pathway	\$ 75,036.00	1.2%
Latino Outpatient	\$ 133,858.00	2.1%
Personal Best	\$ 777,431.00	12.2%
Emergency Psychiatric Services	\$ 54,459.00	<1%
Consortium	\$ 49,296.00	<1%
Adastra	\$ 285,238.00	4.5%
LAN ISO Project	\$ 364,380.00	5.7%
Partial Plus	\$ 447,649.00	7.0%
Cook County Health Department	\$ 33,593.00	<1%
TOTAL EXPENSES	\$6,348,369.00	

Id.

D. Location of the Subject Parcels & Ownership Issues

29. The subject parcels are located at the following addresses and used for the following purposes:

P.I.N.(S)	ADDRESS⁹	BASIC USE
200-070	9845 Roosevelt Road, Westchester, IL	Outpatient Counseling
200-026 through 200-029	9855 Roosevelt Road, Westchester, IL	Outpatient Therapy

Dept. Group Ex. No. 1; Applicant Ex. Nos. 45, 50; Tr. pp. 175, 180, 187.

30. Applicant acquired ownership of the subject parcels via the following documents:

P.I.N.(S):	INSTRUMENT
200-070	Trustee's Deed dated December 2, 1991
200-026 through 200-029	Trustee's Deed dated March 24, 1995

Applicant Ex. Nos. 42, 48; Tr. pp. 175-176, 187.

9. For legal descriptions and information about the physical attributes of the subject parcels (floor plans, square footage, etc.) *See*, Dept. Group Ex. No. 1; Applicant Ex. Nos. 46, 47, 51; Tr. pp. 177, 180-182, 188.

E. Use Issues Related to Parcel 200-070

31. Applicant began occupying parcel 200-070 in March of 1993. From that time until early 1995, applicant used the first floor of this facility to operate its outpatient substance abuse program and the second floor to house administrative offices and clerical support.¹⁰ Tr. pp. 177-178, 193.
32. The administrative offices belonged to applicant's vice president of resource allocation, executive director and associate director of clinical services. Tr. p. 178.
33. The outpatient substance abuse program provides counseling and related services¹¹ to persons who: (a) are 18 years of age or older; (b) are themselves experiencing or are in a relationship with someone experiencing problems in life functioning, such as emotional difficulties or relationship issues, that are attributable to substance use or abuse; (c) have a significant history of such problems; (d) have a current, primary diagnosis of substance abuse or dependency which is not marked by psychotic manifestations or other physical or mental illnesses that require immediate medical or psychiatric care; (e) are not

10. Applicant presented evidence that it started to adapt and use part of this facility for a geriatric program sometime in early 1995. (Tr. pp. 178-179, 185-186, 213-215). Evidence of this use is not relevant to the disposition of Docket Numbers 94-16-867 and 94-16-1300 because applicant is seeking exemption from 1993 and 1994 real estate taxes therein. Consequently, I shall eliminate further consideration of that evidence from this Recommendation and operate on the assumption that parcel 200-070 was used for the above-detailed purposes during 1993 and 1994.

11. For a complete description of these services, which include a mandatory assessment, diagnosis, individual therapy, family sessions, group counseling and medication reviews, *see*, Applicant Ex. No. 54; Tr. pp. 205, 207-208.

intoxicated, incapacitated or in withdrawal due to the effects of alcohol or other substances; and (f) are physically and mentally capable of functioning in their usual non-residential setting. Applicant Ex. No. 54.

34. Persons who are actively experiencing psychotic manifestations or other severe mental or physical illness which requires immediate medical or psychiatric care are subject to exclusion from applicant's outpatient substance abuse program, as are those who are intoxicated, in withdrawal or otherwise incapacitated due to the effects of alcohol or other substances. *Id.*
35. Applicant refers those not accepted for the above reasons to the nearest emergency room, where medical, psychiatric or detoxification services are available. It also refers those in need of inpatient substance abuse treatment to other appropriate resources. *Id.*
36. Persons seeking assistance in the outpatient substance abuse program must submit to an assessment before beginning treatment. During this assessment, prospective clients receive an evaluation of their financial situation (at least as it relates to their ability to pay), acquire information about applicant's fee policy (including procedures for payment), present documentation supporting any requests for fee reductions and reach agreement on the exact amount of any fees payable. Applicant Ex. Nos. 6, 54.
37. Individual fees, which range between \$2.00 and 70.00 per hour, are determined in accordance with applicant's overall fee policy.¹² Tr. pp. 183-184, 204.

12. For details about applicant's overall fee policy, *See*, Findings of Fact 8-19, *supra* at pp. 6-9.

38. Those receiving services in the outpatient substance abuse program are subject to discharge if they: (a) are initially diagnosed as being chemically dependent but remain sober or drug free for at least 3 continuous months; or (b) are not so diagnosed but demonstrate an awareness and understanding of the negative consequences of substance abuse; and (c) prove to be stable in all (or a majority) of life areas which were impaired or problematic at the onset of treatment; or (d) refuse treatment or treatment recommendations; or (d) move out of Proviso Township, and thereby become ineligible for the sliding fee scale as established at the beginning of treatment; and also (e) are unwilling or unable to pay full fees as described in the applicable policy. Applicant Ex. No. 54.
39. Applicant refers relocating clients to other appropriate services in their new residential area. It also assesses appropriate fees, rather than terminates services, to clients exhausting their Medicaid, Medicare or other insurance benefits. *Id.*
40. The overall outpatient substance abuse program is divided into various components, one of which is devoted to treating women suffer from alcohol and substance abuse. Tr. p. 177.
41. The women's program offers services that are similar to those offered in the outpatient substance abuse program. However, the women's program also includes a case management function whereby applicant actively recruits clients from the community. Tr. p. 205.

42. Applicant actively recruited such clients, many of whom paid no fees, because the Illinois Department of Alcohol and Substance Abuse (hereinafter "DASA")¹³ had designated them a focus population. Tr. p. 205.
43. Many of the women's program referrals come from the Illinois Department of Children and Family Services (hereinafter "DCFS"), which also provides some referrals for other components of applicant's outpatient substance abuse program. Other referrals for this program come from applicant's intake department, the City of Chicago, area court systems and telephone listings. Tr. pp. 203, 207, 240-241.
44. Those obtaining services in the women's component of this program are eligible for sliding scale fees, provided that they meet the applicable requirements of applicant's overall fee policy. Applicant Ex. Nos. 6, 7; Tr. pp. 183-184.
45. Another portion of the outpatient substance abuse program provides evaluations, remedial education and other services to DUI offenders referred by a court of competent jurisdiction. Tr. pp. 193, 206.
46. Persons receiving services in the DUI program are not eligible for any reduction or waiver in fees. Applicant Ex. Nos. 6, 7; Tr. pp. 193, 206.

F. Use Issues Related to the Parcels 200-026 through 200-029

47. Applicant purchased parcels 200-026 through 200-029 from the Mental Health Commission (hereinafter the "Commission") on March 24, 1995. It had,

13. DASA was consolidated into the newly-formed Department of Human Services via legislation that became effective July 1, 1997, (*see*, 20 ILCS 301/5-5, 301/5-10, 301/15-5, 301/15-15, 301/45-35), a date which occurred well after the end of the tax years currently at issue. Therefore, DASA rather than the Department of Human Services, shall be treated as the State agency charged with overseeing services provided to persons suffering from substance abuse throughout the remainder of this Recommendation. *See also, infra* at pp. 24, 34-35.

however, provided various services in this facility prior to the date of purchase.
Tr. pp. 187, 189, 193.

48. During 1995, this facility housed applicant's child and adolescent service program (hereinafter "CASP") as part of its family service program (hereinafter "FSP"). Applicant also used this facility to operate a counseling service for senior citizens.
Id.

49. The CASP provides outpatient counseling and related services¹⁴ to children who suffer from a variety of behavioral, emotional and psychological disturbances. Tr. pp. 190; 220, 222; Applicant Group Ex. No. 55.

50. Persons between the ages of newborn to 18 are eligible to receive services in the CASP, as are their related family members. They obtain treatment from qualified professionals¹⁵ pursuant to referrals from local schools, families, DCFS and other community agencies. Applicant Ex. No. 55; Tr. pp. 222-223.

51. Applicant does not require that prospective CASP clients possess any specific financial resources. It does, however, require that they undergo an assessment similar to the one that applicant employs in the outpatient substance abuse program.¹⁶ Applicant Ex. No. 55; Tr. pp. 223-224.

14. For details about these services, *see*, Applicant Ex. No. 55 and Tr. pp. 221-222.

15. For further information about credentials and other details pertaining to the CASP, *see*, Applicant Ex. No. 55.

16. *See* Finding of Fact 36, *supra* at pp. 19-20.

52. Applicant does not waive the fee for this assessment, the cost of which is equal to one hour of counseling. It also adheres to its overall fee policy on intake. Tr. pp. 223-224.
53. Approximately 160 children or families receive services in the CASP in a given month, of which roughly 6 (or 5% of those receiving treatment) pay no fees. Tr. p. 134.
54. Applicant provides some CASP services pursuant to various contracts with DCFS.¹⁷ These contracts provide approximately 20% to 25% of the funding for all of the services that applicant renders in the CASP. Its remaining funding (amounts and percentages unspecified) comes from the Commission, Medicaid billings and fees. Tr. pp. 225, 227.
55. The DCFS contracts identify abused children who suffer problems in functioning attributable to their abuse as priority population for the CASP. They also delineate the specific categories of services that applicant may provide to clients referred by DCFS. Tr. pp. 227-228; 234-235.
56. Applicant is not prevented from providing such referrals with services that fall outside of these categories. However, DCFS will not pay for any such services. *Id.*
57. One DCFS contract covers the cost of outpatient counseling to an unspecified number of clients. Another provides applicant with partial funding for the child advocacy center. *Id.*

17. Applicant did not submit any of these contracts into evidence.

58. Applicant also provides certain other unspecified services pursuant to contracts with Illinois Department of Mental Health and Developmental Disabilities (hereinafter "IDMH").¹⁸ *Id.*
59. The IDMH contracts also identify a priority population, that being children who are severely emotionally disturbed and at risk or have experienced psychiatric inpatient treatment. *Id.*
60. Clients receiving treatment in the CASP are subject to termination if they: (a) have improved, met any agreed treatment goals and are stable with symptom reduction; or (b) they are no longer in need of psychiatric medication or supervision; or (c) their family is no longer seeking treatment and accepting recommendations, provided that the client is not at risk or in crisis; or (d) move out of Proviso Township and thereby become ineligible for sliding scale fees, provided that such clients are unable or unwilling to pay full fees. *Id.*
61. Applicant does not charge fees for any services provided in connection with the intensive services program and the children's advocacy center, which are two of the several individual programs within the CASP. Tr. p. 224.
62. The child advocacy center, which applicant operates in conjunction with the Office of the Illinois Attorney General, is designed to help police deal with sexually abused children. Applicant Group Ex. No. 55; Tr. pp. 190, 224.

18. IDMH was consolidated into the newly-formed Department of Human Services via an amendment to its enabling statute. This amendment did not become effective until July 1, 1997, (*See*, 20 ILCS 1705/1), a date which occurred well after the end of the tax years currently at issue. Therefore, IDMH, rather than the Department of Human Services, shall be treated as the State agency charged with overseeing services provided to the mentally ill throughout the remainder of this Recommendation. *See also, infra* at pp. 34-35.

63. The intensive services program provides case management, outreach and brief treatment to children and families in crisis. Applicant obtains referrals for this program from DCFS, local schools, other agencies in the area and therapists providing services in applicant's other programs. *Id.*
64. Persons afflicted with severe and profound developmental disabilities are ineligible to receive treatment in the intensive services program, as are those who present a danger to staff. *Id.*
65. Clients are subject to discharge from the intensive services program if: (a) the client/family is stable and managing initial problems reasonably well; (b) the client/family has achieved all treatment goals; or, (c) the client/family cannot accept a basic level of case management interaction and is not at risk; or (d) a client/family refuses case management services or present a danger to staff; or accepting recommendations, provided that the client is not at risk or in crisis; or (e) the client moves out of Proviso Township and is unable to return for treatment, or not being eligible for sliding fee scale, is unable/unwilling to pay full fee. *Id.*
66. Applicant will refer relocating clients to other services in their new area. *Id.*
67. Another portion of the CASP focuses on adolescent services. Approximately 75% of those who obtained services in the adolescent services program during 1995 were referred through the aforementioned contracts or had some connection thereto. The remaining 25% came from area schools, advertising, telephone listings and other agencies. Tr. pp. 229-230.

68. The FSP provides counseling and other therapeutic services¹⁹ to those who: (a) are 18 years of age or older; and (b)(1) have had no prior psychiatric hospitalizations within 5 years; (2) are not be afflicted with a current psychosis; (3) not exhibit acute destructive symptoms; (4) present a history of adequate mental/emotional/behavioral [sic] functioning except (i) during life crisis strongly related to maturational development, i.e. young adulthood, engagement, etc; or (ii) with current bothersome symptoms which are related to personality problems, intrapsychic distress of an acute nature, i.e. anxiety, phobia, depression and mild addictive behaviors; or with problem/needs which are related to interpersonal relationships of a mild to moderate level; or (iv) with current problems which are the result of situations, acute distress, external changes and/or losses of moderate to severe nature, i.e. health and illness, housing financial, educational and work issues. Applicant Group Ex. No. 55; Tr. pp. 237-238.
69. Persons receiving treatment in the FSP are subject to the assessment requirements described above as well as applicant's overall fee policy.
70. Such persons are also subject to discharge from the FSP if they: (a) have improved, met any agreed treatment goals and are stable with symptom reduction; or (b) are no longer in need of psychiatric medication or supervision; or (c) refuse treatment recommendations and are not at risk for crisis; or (d) move out of Proviso Township and thereby become ineligible for sliding scale fees, provided that such clients are unable or unwilling to pay full fees. *Id.*

19. For details about these services, which include treatment by an adult psychiatrist, *See*, Applicant Ex. No. 55; Tr. p. 238.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not submitted evidence and argument sufficient to warrant exempting the subject parcels from 1993, 1994 and 1995 real estate taxes. Accordingly, under the reasoning given below, the Department's determinations that said parcels do not satisfy the statutory requirements set forth in 35 ILCS 205/19.7 and 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 ILCS 205/1 *et seq.* and the Property Tax Code, 35 ILCS 200/1 *et seq.* The provisions of those statutes which govern the present proceeding are found in Section 205/19.7 of the Revenue Act of 1939 and Section 200/15-65 of the Property Tax Code.

For present purposes, there is no difference in substance between Sections 205/19.7 and 200/15-65.²⁰ Therefore, I shall cite the latter, which provides in relevant part that:

All property of the following is exempt [from real estate taxation] *when actually and exclusively used for charitable or beneficent purposes*, and not leased or otherwise used with a view to profit:

(a) institutions of public charity

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65. [Emphasis added].

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the

20. See footnote 1, *supra* at p. 2.

burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Here, the relevant exemption pertains to "institutions of public charity". Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"). They have also ascribed to the following definition of "charity[,]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen at 157.

Discussion of the exempt ownership requirement begins with administrative notice of the Recommendation for Disposition in a companion case, Departmental Docket Number 93-16-765, *et al.* Analysis found at pages 29-31 thereof establishes that this applicant fails to qualify as an "institution of public charity" and therefore does not satisfy said ownership requirement. This applicant is the same legal entity found not to be exempt in the companion case. Therefore, the analysis contained therein establishes that applicant is also non-exempt with respect to ownership of the properties at issue in this case.

Even if applicant satisfied the exempt ownership requirement, the following key facts demonstrate that the subject parcels were not in exempt use during the years in question: (1) applicant charges fees, and thereby adheres to its overall fee policy, when administering all programs housed in the subject properties except the child advocacy center and intensive services program; (2) those receiving services in the DUI program are ineligible for sliding scale

fees even if they live in Proviso Township; (3) applicant does not waive the fee for any assessments it performs; (4) such assessments are prerequisites for treatment in the outpatient substance abuse and other programs housed in the subject parcels;²¹ and (5) persons receiving treatment in the outpatient substance abuse, CASP, FSP and intensive services programs are subject to discharge therefrom if they move out of Proviso Township, lose their eligibility for sliding scale fees and either become unable or are unwilling to pay full fees.

This final fact can be analogized to Korzen and other nursing home cases wherein our courts have held that "the absence of a legal obligation to keep and maintain any person who became unable to fulfill his financial obligation ..." is indicative of non-exempt use. Small v. Pangle, 60 Ill.2d 510, 515-516 (1975); Friendship Manor v. Department of Revenue, 91 Ill. App.3d 91, 94 (1980).

Moreover, the testimony of Philip E. Kolski, who is applicant's recovery center director, raises questions about the legal sufficiency of applicant's evidence. Mr. Kolski testified that "a good share" of clients in the outpatient substance abuse program "end up not paying anything." Tr. pp. 204-205. Mr. Kolski further testified that "a good share of those" in the women's program pay no fees. Tr. p. 205.

This and all similar testimony is vague in the sense that it does not contain a more precise definition of "good share." Lacking such a definition, this testimony must also be considered

21. For analysis as to why pre-admission assessments are suggestive of non-exempt use, see, Plymouth Place, Inc. v. Tully, 54 Ill. App.3d 657 (1st Dist. 1977) (denying exemption to nursing home that, among other things, required prospective residents to submit detailed statements as to their health, financial and personal history as a condition for acceptance).

conclusory because it unsuccessfully attempts to equate "good share" with "primary use." Therefore, it does not constitute clear and convincing evidence of exempt use.

The government contracts under which applicant obtains funding for many programs housed in the subject properties provide further evidence that these parcels were not "exclusively used" for charitable purposes during the years in question. Applicant did not submit the actual contracts into evidence. However, testimony establishes that: (1) the outpatient substance abuse received 75% of its total funding from DASA contracts; (2) approximately 80% to 90% of the funding for applicant's women's program comes from contracts with the same agency;²² (3) no less than 60% of the funding for the outpatient counseling component of the CASP comes from applicant's contract with IDMH; (3) the intensive case management program is entirely funded by DCFS; and (4) applicant obtains 90% of the funding for its child advocacy center from the Commission and the remaining 10% thereof from the Office of the Illinois Attorney General. Tr. pp. 183-185, 191-194, 224.

Applicant obtained these contracts via arm's length negotiations in the commercial market place. Thus, the revenues applicant receives therefrom are characterized as governmental payments for services rendered rather than acts of voluntary donation. Consequently, such payments inherently violate both the "gift" quality of "charity" set forth in Crerar v. Williams, *supra* and the second prong of the test articulated in Korzen, *supra*.

More importantly, the aforementioned contracts raise doubts as to whether applicant is dispensing "charity" at its own behest or that of the governmental agencies with which it does

22. The record is unclear as to whether the outpatient substance abuse and women's programs are funded by separate DASA contracts. However, this detail seems insignificant in light of the overall point being made, which is that the contracts *themselves* (whether individual or combined) provide further evidence of non-exempt use.

business. DCFS, DASA and IDMH have identified focus or priority populations which applicant must serve through its women's program and various aspects of the CASP. In addition, 75% of those receiving treatment in the adolescent services program were DCFS referrals or had some connection to applicant's contract with that agency.

The above considerations establish that applicant operates these and other programs housed in the subject properties primarily for limited classes of persons, those being the ones that fall within the parameters of its various governmental contracts. While applicant offered evidence that it provides services to those who do not fall within this class, the preceding considerations that such persons are, at best, incidental beneficiaries. Therefore, for all the aforesaid reasons, I can not conclude that the subject parcels were "actually and exclusively used for charitable or beneficent purposes ..." within the meanings of Sections 205/19.7 and 200/15-65 during the years in question.

Applicant attempts to defeat the preceding analysis by arguing that it removes a burden from the State by providing services that the State would otherwise have to provide itself. It may be true that DASA, DCFS and IDMH are statutorily mandated to oversee the various populations that applicant serves via its outpatient substance abuse, CASP, FSP and other programs housed in the subject properties. (*See*, enabling statutes found at 20 **ILCS** 505/1 *et seq.*; 29 **ILCS** 1705/1 *et seq.* and 20 **ILCS** 301/1-1 *et seq.*). However, I must reiterate that most of the services that applicant provides to these populations result from contracts that applicant negotiates with the appropriate State agencies in the non-exempt commercial marketplace. Hence, applicant's argument is, in all practicality, an assertion that it is relieving the State of a burden merely by doing business with the State.

Our courts have rejected this argument by requiring that applicant's activities benefit the general public rather than a limited class of persons, such as the one that benefits from applicant's various governmental contracts.²³ As noted above, these contracts effectively negate the public benefit requirement because they impair applicant's capacity to provide for those who need its services but do not fall within the appropriate contractually-defined classes.

Applicant further posits that the subject properties are exempt under the above provisions because applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code and adheres to a well-defined fee reduction or fee waiver policy. This argument fails to recognize that the italicized use language which appears

24. For additional analysis of the public benefit requirement and its underlying rationale, *see*, People ex. rel. Brenza v. Turnverein Lincolon, 8 Ill.2d 188, 202-203 (1956); Yale Club of Chicago v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991); DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461 (2nd Dist. 1995). For further analysis as to how this and other requirements are used to determine charitable status (or lack thereof), *see*, Korzen, *supra*.

in the first paragraph of Section 200/15-65 (the substance of which also appears in the first sentence of Section 205/19.7) applies to *all* subsections contained therein. Thus, in order to effectuate the rules mandating strict statutory construction, and thereby maintain the Constitutional limitations which prohibit the General Assembly from enlarging the class of exempt property beyond that set forth in Article IX, Section 6, I conclude that the subject properties cannot be exempted under Sections 205/19.7 and 200/15-65 unless applicant supplements the 501(c)(3) and fee waiver/reduction evidence with appropriate proof of exempt use. *See, Korzen, supra; Small v. Pangle, supra; Friendship Manor, supra.*

Taken as a whole, the preceding analysis establishes that the subject parcels were not in exempt use during the 1993, 1994 and 1995 tax years. Said analysis further discloses that applicant has clearly and convincingly failed to establish that it qualifies as an "institution of public charity" within the meanings of Sections 205/19.7 and 200/15-65 as those statutes have been interpreted by Korzen and other applicable case law. Therefore, the Department's determinations that denied the subject parcels exemption from 1993, 1994 and 1995 real estate taxes should be affirmed.

WHEREFORE, for all the aforestated reasons, it is my recommendation that Cook County Parcel Index Number 15-21-200-070 not be exempt from 1993 and 1994 real estate taxes. It is also my recommendation that Cook County Parcel Index Numbers 15-21-200-026, 15-21-200-027, 15-21-200-028 and 15-21-200-029 not be exempt from 1995 real estate taxes.

June 30, 1998
Date

Alan I. Marcus
Administrative Law Judge